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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE G.PATRI BASAVANA GOUD

WRIT PETITION NUMBER 9431 OF 1990

Connected with

WRIT PETITION NUMBER 2389 OF 1992

Between:

The Superintending Engineer
(Electrical)
Karnataka Electricity Board
Hubli Circle (G & M)
Hubli

.....Petitioner in WP NO.9431 of 1990
Respondent No.2 in WP 2387 of 1992

(By Sri B. C. Prabhakar, Advocate)

And:

1. Sri M. Ismail
care of the Secretary
Karnataka Electricity Board
Employees' Union
Local Committee
Hubli.

.....Respondent No.1 in WP 9431 of 1990
Petitioner in WP 2387 of 1992

(By Sri K.Subba Rao, Adv.)

2. The Management of the
Karnataka Electricity Board
represented by its Secretary,
Cauvery Bhavan
Bangalore 560 009.

.....Respondent No.1 in WP 2387 of 1992

(By Sri B. C. Prabhakar, Advocate)

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3. The Presiding Officer,
Industrial Tribunal
Hubli.

.....Respondent 2 in WP 9431 of 1990
Respondent 3 in WP 2387 of 1992

(By Ms. Shanthakumari, HCGP)

These writ petitions are filed under
Articles 226 and 227 of the Constitution of
India.

Petitioner in WP No.9431 of 1990 seeks
quashing of the award dated 14-9-1989 passed
by the Industrial Tribunal, Hubli in Ref.No.
ID 38 of 1986.

Petitioner in WP 2387 of 1992 also sought
quashing of the above said award, only in so far
as it denies the petitioner herein 50 per cent of
back wages from the date of dismissal till the
date of reinstatement. Petitioner herein further
sought direction to the respondents 1 and 2
herein to grant the petitioner all consequential
benefits consequent upon quashing the award
and to grant him the arrears of salary, full
back wages and all other consequential benefits
which he would have got, including the continuity
of service, promotion, etc., and he not been
dismissed from service.

These writ petitions coming on for hearing
this day, the Court made the following:

O R D E R

The workman concerned, M. Ismail, had been
working as Junior Assistant in the Karnataka
Electricity Board (KEB). Several charges were
levelled against him relating to misappropriation
of funds and negligence in doing his duties.

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On proof of misconduct in a domestic enquiry, the workman was dismissed from service. He raised an industrial dispute in that regard that came to be referred to the Labour Court Hubli under Section 10(1)(c) of the Industrial Disputes Act, 1947 ('Act' for short). The reference was ^{Subsequently} ~~consequently~~ transferred to the Industrial Tribunal, Hubli. The domestic enquiry was initially held invalid. Evidence was then permitted to be led. On appreciation of evidence on record, the Industrial Tribunal held only the charge of negligence as having been proved and, though not stated in so many words, the Tribunal has, for the said charge, found the punishment of dismissal from service to be disproportionate and in its place, has substituted a lesser punishment of denial of 50 per cent of back wages. With this lesser punishment, the Tribunal, by its award dated 14-9-1989, has directed the workman to be reinstated in service with the benefit of continuity of service and consequential benefits. The management as well as the workman have challenged the award under Articles 226 and 227 of the constitution - the management in so far as

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the award directs reinstatement of the workman with 50 per cent of back wages and continuity of service, and the workman in so far as the award denies him 50 per cent of back wages.

2- Extensive evidence was led in to establish the lapses on the part of the workman. As found by the Industrial Tribunal, several instances have been established such as non-recovery of the amount due from the consumer, posting the entry in respect of payment by one consumer to the account of another consumer, collecting lesser amount from the consumer than what is actually to be collected, etc. These facts are virtually admitted inasmuch as, the workman has no answer to all these lapses except saying that he had been under pressure of work and at times saying that he had received lesser amounts on the instructions of the superiors which contention did not stand substantiated. The Industrial Tribunal, therefore, found that there was absolutely no case of misappropriation, and the Tribunal also notices in this regard that no one from the management in the course of evidence spoke to even a single paise that had been collected by the workman as having been

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misappropriated. The charge of misappropriation thus rightly was held not proved. The charge of negligence however very much stood established as discussed above. In the circumstances, therefore, the Tribunal passed the impugned award.

3. Sri Subramanya, learned counsel for the management, strenuously urges that it was not a solitary incident of the workman being found negligent, but there were series of such incidents which brought the KEB into disrepute. Ms. Suma, learned counsel for the workman, however, urges that the workman had been under such tremendous pressure of work, and that his superiors also were guilty of not properly supervising, and, in the circumstances, the Tribunal ought to have awarded full back wages.

4. There could be no disputing the position that, on the basis of the evidence on record, the charge of negligence had to be held as proved. The only question is whether the Tribunal acted arbitrarily in concluding that the punishment of dismissal from service was disproportionate to the said proved charge of negligence, and in substituting the lesser

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punishment of withholding 50 per cent of back wages. A reference to the evidence of the Section Officer Abdul Rafiq, examined as MW-3 in support of the case of management, would be of significance in this regard. His evidence would disclose that the workman was required to attend to the work of collection of consumer charges in respect of consumers in 45 villages in Kalghatgi ^{Taluk,} covering as many as 2000 lighting and commercial installations, 85 power instalments and 80 IP sets. When, as found earlier, there was no case of misappropriation and when it was only a case of negligence, the said negligence, viewed in the light of the pressure of work that the workman was put to as spoken to by the Section Officer, PW-3 Abdul Rafiq, would make it clear that, for the said act of negligence, punishment of dismissal from service was disproportionate. The Tribunal cannot be said to have acted arbitrarily in substituting, as a lesser punishment, denial of 50 per cent of back wages.

5. There is, therefore, no infirmity in the

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impugned award. Both the writ petitions are dismissed.

Sd/-
JUDGE

